

ADUL.
February 23, 2021.
MNS.

W. P. A. 5448 of 2021
(Via video conference)

Rakesh Singh @ Rakesh Kumar Singh
Vs.
State of West Bengal and others

Mr. Billwadal Bhattacharya,
Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee,
Mr. Avijit Singh

... for the petitioner.

Mr. Kishore Datta,
Mr. A. Majumdar,
Mr. Debasish Ghosh,
Mr. Sayan Sinha

...for the State-respondents.

Mr. Y. J. Dastoor,
Mr. Debu Chowdhury

...for the Union of India.

The petitioner alleges that, upon joining a rival political party in about March 2018, the present ruling party, through the State administration, has been initiating numerous criminal cases against the petitioner, 27 (twenty seven) to be precise.

Learned counsel for the petitioner submits that the current challenge is against a notice given to the petitioner under Section 160 of the Code of Criminal Procedure read with Section 67

of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It is submitted that, all the criminal cases have been maliciously instituted in order to mete out a political vendetta against the petitioner. Learned counsel submits that the first of the twenty-seven criminal cases was initiated in April, 2018.

By placing reliance on paragraphs 17 and 18 of the writ petition in particular, learned counsel cites several instances where leaders of the current ruling party of the State have been allegedly overactive in maligning and smearing the name of the petitioner before the media and otherwise.

Learned counsel further submits that the impugned notice is merely a precursor of the petitioner's apprehended arrest by the Detective Department, Lalbazar in the garb of calling the petitioner for examination.

It is further submitted that the notice was issued on the same day that the investigation of the case, in connection with which the petitioner has been called, was transferred to the Narcotic Cell, Detective Department, Lalbazar. As such, there could not have been any scope for the Narcotic Cell to have sufficient material to justify

the apprehension that the petitioner might have information regarding the said case. Additionally, learned counsel submits that the particular Assistant Commissioner of Police who issued the notice had previously harassed the petitioner on several occasions, thereby lending strength to the apprehension that the notice was a vengeful act which might lead to an unlawful arrest of the petitioner.

Learned counsel relies on ***State of Punjab vs. V. K. Khanna and others*** reported at **(2001) 2 SCC** for the proposition that the test is as to whether there is a mere apprehension for bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing real danger of bias, administrative action cannot be sustained.

Learned counsel further places reliance on a co-ordinate Bench judgement of this Court rendered in ***Kishwar Jahan and Another Vs. State of West Bengal and others*** reported at **2008 (3) CHN 857**. The learned single Judge, in the said case, was pleased to accept the

contention of the petitioner therein that whenever a writ petition is filed praying for enforcement of a right under Article 21 of the Constitution the same ought to be entertained without relegating the applicant to an available alternative forum, for the same would hit the basic structure of the Constitution which, in the considered opinion of the Court, would not be prudent. In the said judgement, the learned single Judge further discussed the wide scope of Article 226 of the Constitution of India in such regard.

Learned counsel for the petitioner next cites ***Mehmood Nayyar Azam Vs. State of Chhattisgarh and others reported at (2012) 8 Supreme Court Cases 1***. In paragraph 36 of the said judgment, the Supreme Court observed that there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It was further observed that the Constitution, as the organic law of the land, has unfolded itself in a manifold

manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. The Supreme Court went on to hold that for the above reasons, an investigator of a crime is required to possess the qualities of patience and perseverance as has been stated in ***Nandini Satpathy vs. P. L. Dani*** [1978 SC 1025].

Learned Advocate, General appearing for the State-respondents, at the outset submits that the petitioner is a “history sheeter” and was an accused in 56 (fifty-six) cases in total. Several of those cases, it is submitted, range over a period at least ten years prior to the change of political colour by the petitioner. As such, the question of political vendetta has to be ruled out.

Learned Advocate General further submits that the authority issuing the impugned notice had ample power to do so, both under Sections 160 of the Code of Criminal Procedure and Section 67 of the NDPS Act. As such, no *mala fide* can be

attributed to the authorities *ipso facto* by the issuance of such notice.

Learned Advocate General further relies on an e-Mail sent by the petitioner to the Commissioner of Police, Kolkata, on February 2, 2021 which indicates that the petitioner expressed that, even if he was found tangentially connected to the particular case in connection with which the present notice has been issued, he may be called for investigation consequent to serving due and proper notice. It was further mentioned in the petitioner's e-mail that he committed to fully cooperate with the Commissioner of Police in this matter if he ever had any information that might serve the Commissioner's purpose.

Moreover, it is argued that if the apprehension of the petitioner is merely the arrest of the petitioner, which may occur consequent to the petitioner attending pursuant to the notice, the remedy of the petitioner lay under Section 438 of the Code of Criminal Procedure. Section 438 of the Code of Criminal Procedure lays down certain specific stipulations and conditions under which anticipatory bail can be granted. The petitioner does not fulfil those conditions, in view of prior

convictions in other cases, which might have prompted the petitioner to take recourse to the writ jurisdiction to obviate such hurdle.

Learned Additional Solicitor General takes a neutral stand and desists from commenting in the matter, since the Union of India, according to the learned Additional Solicitor General, is not a necessary party to the present writ petition.

Upon hearing all sides, it transpires that several criminal cases were already pending against the petitioner prior to his change of political party. The petitioner, however, only focused on the twenty seven cases initiated after such shifting of allegiance to vindicate the apprehension of unlawful arrest consequent to the petitioner responding to the impugned notice. Such pendency of prior proceedings takes away the sting from the petitioner's allegations of *mala fides*, since the petitioner can veritably be labelled as a history sheeter in the factual scenario of the case.

That apart, even if there was some merit in the petitioner's apprehension of political vendetta, it is premature at this stage to arrive at such a conclusion.

Section 67 of the NDPS Act give sufficient leeway to the investigating authority to call for information from any person for the purpose of satisfying itself whether there has been any contravention of the provisions of the Act or any Rule or order made therein, require any person to produce or deliver any document or thing useful or relevant to the enquiry or examine any person acquainted with the facts and circumstances of the case. For the said purpose, the investigating authority has every power to issue a notice under Section 67 of the NDPS Act.

Section 160 of the Code of Criminal Procedure is also in consonance with the cardinal principle in-built in Section 67 of the NDPS Act inasmuch as the same confers upon the police officer making an investigation to require attendance before himself of any person within the limits of his own or adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case.

The impugned notice categorically mentioned that it appeared to the investigating officer that the petitioner was well acquainted with the facts and circumstances of the case and his

examination in that regard was very much required to unearth the truth.

As such, the criteria stipulated in Section 67 of the NDSPS Act and Section 160 of the Code of Criminal Procedure formed the basis of the impugned notice.

That apart, the question as regards whether it was possible to come to such finding for the Assistant Commissioner of Police of the Narcotic Cell, Detective Department at Lalbazar within so short a span of time upon being entrusted the case, it would merely be a conjecture to come to a finding in that regard. It entirely depends on the stage of investigation and/or the information received by the investigating authority. Mere haste, without any attending circumstance to prove *mala fides*, cannot suffice to interdict such action by the investigating authority under the writ jurisdiction. It is rather premature to allege that the notice was issued with a *mala fide* intention to malign the petitioner.

Moreover, in view of the petitioner himself having expressed his intention to cooperate with the investigation, vide e-Mail dated February 21,

2021 as annexed to the writ petition itself, there is no scope of interfering with the notice-in-question.

There is substance in the contention of the State-respondents that the petitioner ought to have availed the remedy under Section 438 of the Code of Criminal Procedure to obtain anticipatory bail, upon satisfaction of the tests stipulated therein, in the event the primary concern of the petitioner was the apprehension of arrest. Having not done so, such remedy cannot be bypassed by way of the present writ petition.

Accordingly, this Court finds no merit in the writ petition.

W. P. A. 5448 of 2021 is dismissed.

However, this order will not prevent the petitioner from taking recourse to appropriate provisions of law, in the event of the petitioner apprehends arrest, before a competent forum.

It is further clarified that the observations made above are tentative in nature, confined only to adjudication of the present writ petition, and shall not prejudice the contentions of the parties in any pending or subsequent legal action and/or proceeding before any forum.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)